

January 11, 2011

Testimony HB 198

Federal Relations,  
Energy and Telecommunications

Chairman Klock and fellow committee members my name is Chris Stephens. My family and I farm near Dutton, Montana. We oppose this bill.

We all recognize the public electric utilities have to be able to use eminent domain as a last resort to serve the needs of everyone. In these cases, the **awesome** power to take private property for public use is balanced by the Public Service Commission's ability to determine this necessity and regulate rates and these utilities serve all the public, not just a few select businesses lucky enough or rich enough to purchase a spot on their merchant transmission line.

HB 198 sections 2-5 are a vast expansion of eminent domain powers. With this bill the State of Montana will take private property of one person or business to give to another person or business. These lines can be built without the use of eminent domain by bringing the impacted landowners in the revenue stream. This is about greed not need.

I have been told by a former State senator from the highline that I "should take one for the team". Well, my family, who isn't any different from hundreds of other rural families, have provided easements and property for county roads, electric cooperatives, rural water districts, a public library, rural telephone cooperatives, fiber optic lines, gas and oil lines, and yes, even the Western Area Power Association. I have lots of team spirit.

MATL is very proud of its new business model, but refuses to modernize the payment structure. They need to move into the 21<sup>st</sup> century and bring the landowners impacted by these lines into the revenue flow of these businesses. These landowners provide a basic, core requirement "land" for the success of a merchant line and should be justly compensated for as long as these lines make use of their property.

Wind farms, the beneficiary of these transmission lines, do not have nor do they miss having the power to take private property. They use a royalty payment structure coupled with long-term leases. Wind farms sit down and negotiate a business agreement where everyone makes money and works toward the success of the company. There is no true negotiation when the gun of eminent domain is pointing at your head. Our personal experiences of MATL has proven this to be true in Montana as it is true in Canada where 64% of the line has had to be condemned. (This figure comes from a quarterly report to the stockholders from Tonbridge-MATL's parent company. In the interest of full disclosure I have over 5000 shares of stock in Tonbridge. So, I am not out to do harm to this company.

A group of landowners and myself suggested to MATL, over five years ago, if they adopted a royalty-lease business model we would help get the agreements from our neighbors. You would think that these merchant lines would want the landowners to be a true part of their project helping to make it profitable. Instead of negotiating a mutually beneficial business agreement they come to the legislature to obtain the power to take what isn't theirs. I repeat this is about greed—not the inability to build these lines without eminent domain. They can, but they have to pay.

Since the enactment of the Montana Facility Siting Act, each legislature has diminished the authority and the scope of the review for these transmission lines. This session is no different. There are several bills currently introduced or being drafted to further diminish the public input and comment on these lines. How can it make sense to further diminish the review process and then make the findings of this weak and incomplete review the foundation and authority for takings of private property? Is the DEQ to become simply an agency whereby, a private business may come and pay a fee for a rubber stamp review and be issued a certificate with the authority of eminent domain?

What constitutes a "public need"? Is it simply a business that will provide jobs and pays taxes? Well, our family business has been providing employment and paying taxes in Teton County for over 100 years. Do jobs and taxes trump my property rights? There has to be a greater public benefit than these narrow parameters. Can any one use the MATL line or the MISTI line? No. A public utility provides power to all users and any one can use a public road or a public park. MATL currently has four customers—not a great many and the MISTI line will also be limited to a few users, who are rich enough or lucky enough to have the ability to pay to use these lines. Having the ability to pay to use something is usually not a requirement that constitutes a public use.

During the review by DEQ of the MATL merchant line the public need portion was provided by MATL as a part of the application process and there is no documentation that the DEQ ever really questioned the basic facts MATL made. Indeed the EIS is a huge document and the public need portion can easily be overlooked if a person blinks. The DEQ's overwhelming work product of the EIS deals with design and placement of poles. Environmental review. So here we are having the portion of the EIS with the least effort put into it, becoming the foundation of the taking of private property.

Where does this expansion of eminent domain end? Wind farms don't currently have the power of eminent domain, but have the need to build feeder lines to get to these transmission corridors. Without these feeder lines they are isolated and useless. We have in Montana people with enough private property and wealth (we can all think of one or two) to build their own personal wind farm. Would we provide this person the right of eminent domain to get to a MISTI or a MATL?

These merchant transmission lines do not want to go to the time, effort, nor expense to arrive at a business arrangement with the landowners. They simply want enough power to get their way without sharing any of the profits with the landowners upon whose backbone these lines are built. The impacts of these lines get ever greater not less as times go on.

In conclusion, I repeat, this is not about need it is about greed.

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